IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 479 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YUNUS IBRHIMBHANIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 479 of 2003
MR LR PATHAN for Petitioner No. 1
MR MA SAPA for Petitioner No. 1
MR HL JANI APP for Respondent No. 1-2
MR MA KHARADI for Respondent No. 3
MR MM SAIYED for Respondent No. 3
RULE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Petitioner-Yunus Ibrahim Bhaniya, father of major Sayraben, wife of respondent No.3-Altaf Yakub Musa Bharatwala has filed this Habeas Corpus under Article 226 of the Constitution of India praying that Police Inspector, Bharuch Police Station, Bharuch-respondent No.2 be directed to produce Sayraben before this court from the custody of Altaf Yakub Musa Bharatwala-respondent No.3.

#. Initially, this petition was moved before learned Vacation Judge (Coram : Jayant Patel, J.) on 22.5.2003. At that time a request was made to implead District Superintendent of Police, Bharuch as party respondent to this petition and accordingly oral leave was granted to implead District Superintendent of Police, Bharuch as respondent No.4. Thereafter on 22.5.2003 learned Vacation Judge issued rule on this petition making it returnable on 29.5.2003. However, notice of rule could not be served upon respondent Nos.3 and 4, therefore, on 29.5.2003 another Vacation Judge, Akshay H. Mehta, J. ordered to issue fresh notice of rule to the respondent Nos.3 and 4 making it returnable on 9.6.2003. On 9th it was adjourned to 18.6.2003.

#. On 18.6.2003 this petition was placed before regular Division Bench of this court (Coram : Kshitij R. Vyas & M.S.Shah, JJ.). It appears from the order sheet dated 18.6.2003 this petition that having perused police papers, Their Lordships were not happy with the investigation carried out, therefore, Their Lordships were of the opinion that the matter is required to be investigated at the higher level and accordingly District Superintendent of Police, Bharuch was directed to see that the investigation is carried out by the Dy. Superintendent of Police, Bharuch-respondent No.4 and the missing girl-Sayraben be traced out as early as possible and the matter was kept on 2.7.2003.

#. On 2.7.2003 Dy. Superintendent of Police sent his report through the constable instead of personally remaining present. Having gone through the report and the police papers, Their Lordships observed that the present officer was taking the investigation in a very casual manner, therefore, directed to carry out proper

investigation and the matter was kept on 18.7.2003.

#. On 18.7.2003, Mr.Asari, Dy. Superintendent of Police, Bharuch personally remained present and stated that he has recently taken over the charge at Bharuch, therefore, he will need some more time and accordingly the matter was kept on 1.8.2003.

#. On 1.8.2003 further time was given by the said Bench up to 18.8.2003. On 18.8.2003 another Division Bench (Coram : J.M.Panchal & A.M.Kapadia, JJ.) kept this matter on 25.8.2003.

#. On 25.8.2003 this petition was placed before this court and on instruction from Dy. Superintendent of Police, Bharuch, learned APP, Mr.Jani stated at the Bar that missing girl-Sayraben was stated to be at Mumbai and the parties were trying to settle their dispute amongst themselves. Therefore, they have not remained present before the court. However, learned counsel appearing for the petitioner at that time stated that he had no such instructions regarding any compromise and he would like to take necessary instructions in the matter. Hence, the matter was kept on 3.9.2003. While adjourning the matter it was made clear that if the parties are unable to settle the dispute, then the Investigating Officer may see to it that Sayraben is kept before this court on 3.9.2003.

#. On 3.9.2003 Dy. Superintendent of Police, Bharuch, Mr.Asari personally remained present through learned APP, Mr.Jani and stated that the police was trying to find out the whereabouts of Sayraben, but in spite of their best efforts they could not find out the whereabouts of Sayraben. He prayed for further time and the matter was kept on 6.10.2003 i.e. today.

#. Today, Mr.Asari, Dy. Superintendent of Police has placed on record a letter dated 4.10.2003 by Mr.A.V.Vasava, District Superintendent of Police addressed to the Director General and Inspector General of Police, Gujarat State, Gandhinagar for entrusting the investigation of CR No.35 of 2003 for the offences under Sections 362, 365 and 368 of the Indian Penal Code to CID, Crime Branch. From the said report of District Superintendent of Police, Bharuch it appears that there is no proper cooperation from the village people because by and large they belong to one community. That apart serious allegations have been made against Investigating Officers and because of that the Investigation was entrusted from one officer to another officer, but in

spite of the best efforts of the police, they are not in a position to trace out the missing girl. Under the circumstances, when the complainant is not satisfied with the investigation carried out by the local police, then it may be entrusted to Additional Director General of Police, CID Crime & Railways, Gujarat State, Gandhinagar. Along with the said letter dated 4.10.2003 details about the investigation carried out by the police so far is annexed, which shows that so far the police has recorded as many as 80 statements right from 5.4.2003 up to 3.10.2003. But, in spite of their best efforts, they were unable to trace out the missing girl-Sayraben.

##. In view of the above, learned counsel Mr.Pathan for the petitioner, on instruction from the petitioner, who was very much present before the court stated that he would be satisfied if the investigation is transferred by the Director General and Inspector General of Police to Additional Director General of Police, CID & Railways, Gujarat State, Gandhinagar.

##. In view of the above, learned APP, Mr.Jani submitted that they will have no objection if the Director General of Police and Inspector General of Police passes appropriate order on the letter / application dated 4.10.2003 submitted by the District Superintendent of Police, Bharuch and transfer the case to Additional Director General of Police, CID & Railways, Gujarat State, Gandhinagar.

##. In view of the above, nothing more is required to be done in the matter and accordingly, this petition is required to be disposed of. While disposing of the writ petition, it is hope and trust that Director General of Police and Inspector General of Police, State of Gujarat, Gandhinagar shall take the decision on the letter / application dated 4.10.2003 submitted by District Superintendent of Police, Bharuch and transfer the investigation to Additional Director General of Police, CID & Railways, Gujarat State, Gandhinagar. On the investigation being transferred, the investigation agency shall continue its sincere efforts to find out whereabouts of missing girl-Sayraben.

With these observations, this petition stands disposed of. Rule is discharged.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

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